SUPREME COURT OF THE UNITED STATES.

Nos. 328, 329.—October Term, 1925.

Cincinnati, Indianapolis & Western Railroad Company, Appellant, *vs.* Indianapolis Union Railway Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.	Appeals from United States District Court for the Southern District of Ohio.

[March 1, 1926.]

Mr. Chief Justice Taft delivered the opinion of the Court.

These are appeals under section 238 of the Judicial Code, allowed February 18, 1925, in two cases between the same parties from identical decrees of the District Court for the Southern District of Ohio. By agreement they are to be treated in every respect as one. The certificate of the District Court is that the petition as amended "does not show the existence of the requisite diversity of citizenship, nor the existence of a Federal question, and that this Court, not having found the said petition to be ancillary to any prior suit, but having found the said petition to be original, did thereupon dismiss the same upon the sole ground of want of jurisdiction." The question of jurisdiction is whether a petition by the purchasing company at a railway foreclosure sale in seeking to reform, because of mistake, its contract of purchase in imposing upon it liability for rentals under a terminal facilities contract, is a suit ancillary to the original foreclosure suit so that jurisdiction exists in the Federal district court to hear it, without regard to the citizenship of the necessary parties to the petition.

The two original foreclosure suits were brought, one by the Equitable Trust Company of New York and Elias J. Jacoby as trustees, against the Cincinnati, Indianapolis & Western Railway Company, and the other by the Central Trust Company of New

York and Mason, trustees against the same Railway Company. There was the necessary diversity of citizenship in each case, and the appellant in this present suit, the Cincinnati, Indianapolis & Western Railway Company, is a newly organized company, the assignee of the purchaser at the foreclosure sales of the whole railroad property covered by all the mortgages foreclosed. It became a party to each cause as such assignee, as permitted in the decree of foreclosure in each case, and it will be hereafter called the purchasing company.

The Indiana, Decatur & Western Railway Company owned the part of the railway from Indianapolis to Springfield, Illinois. The Cincinnati, Hamilton & Indianapolis Railway Company owned the part from Indianapolis to the East. In 1902 they were merged into a corporation called the Cincinnati, Indianapolis & Western Railway Company, which gave a first refunding mortgage upon the two properties. It was expected that the bonds secured by this mortgage would be used in refunding two underlying mortgages on the eastern part, and a single underlying mortgage on the western part. The refunding was not completed and the two foreclosure suits, already referred to, were filed at the same time in the same court, so that by an identical decree in each case the purchaser was enabled to acquire title to the consolidated railway free from the liens of the four mortgages. The decree of foreclosure in each case contained a provision giving the purchaser under the foreclosure sale, and his successors or assigns, the right for a period of thirty days after the delivery of the master's deed, to elect "whether or not to assume or adopt any lease or contract made by the defendant consolidated company, or its predecessors in title, and such purchaser, his successors or assigns, shall be held not to have adopted or assumed any such lease or contract in respect of which he or they shall have filed a written election not to assume or adopt the same with the Clerk of this Court within the said period of thirty days."

Within the thirty days, the purchasing company filed in the two foreclosure cases what it called an election "not to assume or adopt the contract dated September 20, 1883, and the amendment of August 20, 1906, under which the tracks of the Union Railway Company are occupied in Indianapolis in so far as such rights are conferred by the signature of the Indianapolis, Decatur

Springfield Railway Company to said contract. This assignee eby expressly accepts such contract as made with the Cincin- i, Hamilton & Indianapolis Railroad Company, and desires to ept the benefits of the contract with said company, and the ht to occupy the tracks of the Union Railway Company and Indianapolis Belt Railway Company therein conferred."

The Indianapolis Union Railway Company is a company engaged operating a union railway depot and union railway tracks for use of several railroads entering that city, its properties having n owned by five so-called proprietary companies and conveyed them to it. It had acquired a perpetual lease of a belt line. ptember 20, 1883, an agreement was made between the Union ilway Company and five proprietary companies, by which each the companies in the use of the terminals became liable for a ed rental which was to be paid by each company, whether e terminal was used or not. Then there were admitted seven n-proprietary companies to the joint use of the Belt Rail- y and Union Railway Company property under the same reement as to a fixed rental, in addition to which there as to be a payment in proportion to the use on the basis of ieelage. At this time the Indianapolis, Decatur & Springfield ilway Company owned the part of the railroad here in question est of Indianapolis, and it bound itself for one-thirteenth of the ntal, and the Cincinnati, Hamilton & Indianapolis Railroad Com- any owning the other part of the railroad here in question east Indianapolis became bound for another one-thirteenth of the ntal. In 1902, the two companies were united under the name of ie Cincinnati, Indianapolis & Western Railroad Company, and om that time until the foreclosure in 1915, the united company aid two-thirteenths of the rentals. When, however, the decrees ere made in the foreclosure of the two parts of the railway the urchasing company, the appellant here, sought to reduce its rental om two-thirteenths to one-thirteenth by electing to take the con- act for rental of its predecessor in title of the eastern part of ie united railway, and to refuse to elect to take the contract of ental of its predecessor in title for the western part of the railway, nd having filed such an election, it declined to pay more than one- hirteenth of the rental.

There then intervened in the original foreclosure suits the ndianapolis Union Railway Company and the then proprietary

parties to the terminal agreement by petitions asking that the purchasing company show cause why it should not be ordered to make payment to the Indianapolis Union Company of the full amount that would have been payable to that company by the Cincinnati, Indianapolis & Western Railway Company, the defendant in the foreclosure in both suits. Jurisdiction was taken of this petition, and the District Court held that the so-called election was unauthorized and improper, and that the purchasing company for failure to elect to reject the contracts entirely was responsible for two-thirteenths of the total rentals. This controversy was carried to the Circuit Court of Appeals for the Sixth Circuit, which affirmed the District Court. *Cincinnati, I. & W. R. Co.* v. *Indianapolis Union Railroad Company*, 279 Fed. 356.

The order of the Circuit Court of Appeals was made in 1922. In 1924, the present intervening petition was filed by appellant as purchaser against the Indianapolis Union Railway Company and the proprietary companies, which had been parties to the preceding controversy. In this, the petitioner, the present appellant, sought to have the court relieve it from the effect of its so-called ineffective election by which it made itself responsible according to the decree of the Circuit Court of Appeals for two-thirteenths, on the ground of its mistake in not electing to reject the whole contract for use of the terminals. On the hearing of the petition to which the Indianapolis Union Railway Company and the other defendants filed answers, the District Court held that the delay of two years between the coming down of the decree from the Circuit Court of Appeals in 1922 until 1924, when the petition was filed, was a delay constituting acquiescence which would prevent the consideration of the petition. The petitioner then filed an amendment to its petition, in which it set out reasons thought by it to justify the delay, including a statement that attempts had been made to secure relief by a personal negotiation with the interested parties to whom it had indicated from the first that it did not intend to acquiesce in an obligation to pay the rentals. The District Court, conceiving that by reason of the delay of two years such relief as the petitioners sought must be obtained by an independent suit, and not by an ancillary proceeding, held that there being no diversity of citizenship or Federal question to justify jurisdiction, the petition must be dismissed.

The sufficiency of the petition in equity is not for us to consider. We have here only the question of jurisdiction. On that issue, we think the District Court was in error. The present proceeding deals with the effect of the decree upon which the petitioner became the owner of the property. The previous litigation between the parties to this petition as to the effect of the attempted election in which the petitioner was defeated involved a construction of the decree of sale and the purchaser's action under it in the foreclosure proceedings. That decree provided that "all questions not hereby disposed of are reserved for future adjudication. Any party to this cause may at any time apply to this Court for further relief at the foot of this decree". It also provided "that the purchaser had the right to enter appearance in this Court and to become a party to this cause", and it made itself a party under that order. The Circuit Court of Appeals in its opinion in the case already cited said:

"Notwithstanding the property had passed from the possession of the court, appellant, (that is petitioner), as the purchaser would have an undoubted right to apply to the court for relief respecting the controversy over its right of election under the sale."

At the instance of the defendants here, the purchaser was held by its so-called election to be bound to the two contracts, and having been thus defeated, it seeks the equitable intervention of the court, on the ground of mistake, to secure relief from this adjudicated effect of its unsuccessful attempt at election. Assuming that it has a right to seek such a remedy (and we must do so in this hearing), we do not see why it may not obtain that relief in the same forum by ancillary proceeding in the original suit in foreclosure in which it was held to have bound itself by its purchase and ineffective election. It may be that equity will not give it relief from mistake under the circumstances. It may be that it has acquiesced and may be denied relief on that account. It may be that it has been guilty of laches. But these are questions on the merits. We can not see that they affect the jurisdiction of the court to consider the issue thus raised.

The present proceeding is only another phase of the same litigation, carried on as ancillary to the foreclosure suit, in which the purchasing company was found to be bound by its purchase to pay two-thirteenths of the rentals to the Indianapolis Union Rail-

way. The purchaser seeks to recur to the circumstances under which it attempted to accept liability to pay one-thirteenth of the rental and to reject the other one-thirteenth. It says that as the Circuit Court of Appeals has held that its attempted election was invalid and ineffective for the purpose, it should have equitable relief from the oppressive obligation to pay two-thirteenths on the ground of its mistake and be permitted to make an election which will relieve it from the contract to pay any rental at all, as it might have done when it became the purchaser. Such a proceeding is certainly ancillary to the enforcement of the decree of sale and the contract of purchase. *Rosenbaum* v. *Council Bluffs Insurance Company,* 37 Fed. 724; *Bradshaw* v. *Miners' Bank of Joplin,* 81 Fed. 902. Clearly it is a natural and closely proximate sequence of the sale by the Court and requires the interpretation of its decree and the attempted election of the purchaser under it and the consideration of its effort to correct the alleged inequitable result. "A purchaser or bidder at a master's sale in chancery subjects himself *quoad hoc* to the jurisdiction of the court and can be compelled to perform his agreement specifically. It would seem that he must acquire a corresponding right to appear and claim, at the hands of the court, such relief as the rules of equity proceedings entitle him to." *Blossom* v. *Railroad Company,* 1 Wall. 655, 656. It is well settled that where a bill in equity is necessary to have a construction of an order or decree of a Federal court, or to explain, enforce or correct it, a bill of this kind may be entertained by the court entering the decree, even though the parties interested for want of diverse citizenship could not be entitled by original bill in the Federal court to have the matter there litigated. *Julian* v. *Central Trust Company,* 193 U. S. 93, 113; *Minnesota Company* v. *St. Paul Company,* 2 Wall. 609, 633; *Wabash Railroad* v. *Adelbert College,* 208 U. S. 38, 54; *Hoffman* v. *McClelland,* 264 U. S. 552, 558.

The District Court had jurisdiction, and the decree dismissing the petition should be

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.